

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

## **REPORT AND RECOMMENDATION**

Petitioner, a federal prisoner appearing pro se, filed this action on July 18, 2008, seeking a writ of habeas corpus under 28 U.S.C. § 2241. United States District Judge Joe Heaton has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). For the reasons set forth herein, the undersigned recommends that the petition be dismissed without prejudice, due to Petitioner's failure to pay the filing fee and his failure to comply with the rules of the Court.

In an order dated July 21, 2008, the undersigned directed Petitioner to either pay the required filing fee or file a motion to proceed in forma pauperis by August 11, 2008, or risk dismissal. [Doc. No. 4]. The order was mailed to the Petitioner at the address he has provided to the Court, but was returned to the Court as undeliverable “attempted not known” and “return to sender.” [Doc. No. 5]. On August 20, 2008, the undersigned entered another order, noting that Petitioner had obviously not complied with the local court rule requiring him to notify the Court of a change in address, but the Court directed the court clerk to re-mail the

July 21, 2008 order to the Petitioner at his address on file, along with a form for him to provide the Court with a change of address. [Doc. No. 7]. Petitioner was advised that his failure to keep the Court advised of any change of address might result in this action being dismissed without prejudice to re-filing. [Doc. No. 7]. On September 3, 2008, that order was also returned as undeliverable. [Doc. No. 8].

The undersigned has attempted to advise Petitioner through an order mailed to the address he provided with his petition that unless he paid the \$5.00 filing fee or was granted leave to proceed in forma pauperis, this action would be subject to dismissal without prejudice. Local Civil Rule 3.3(e). However, due to Petitioner's failure to comply with Local Civil Rule 5.4(a), which provides in relevant part that a pro se litigant must notify the Court of any change of address by filing the form provided by the Clerk, the Court's orders have been undeliverable.

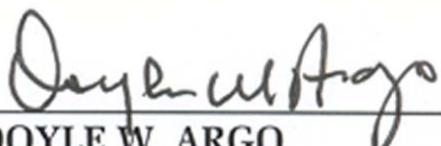
A court has the inherent power to dismiss an action for failure to prosecute in order to achieve an orderly and expeditious resolution of cases. Link v. Wabash Railroad Co., 370 U.S. 626, 630-631 (1962). Petitioner's failure to comply with the Court's orders and procedural rules should, in the exercise of the Court's discretion, be adequate grounds for dismissal of the instant action without prejudice due to Petitioner's failure to prosecute his action. See Thornton v. Estep, No. 05-1263, 209 Fed. Appx. 755, 757 (10th Cir. Dec. 18, 2006) (holding district court did not abuse its discretion by dismissing pro se inmate's petition for failure to prosecute due to inmate's failure to comply with local rule regarding

notification to the court of change of address).<sup>1</sup> The undersigned has twice attempted to contact Petitioner, to no avail. Thus, it is recommended that this action be dismissed without prejudice.

**RECOMMENDATION**

Accordingly, because Petitioner has neither paid the partial filing fee as ordered by this Court nor notified the Court of his correct address, it is recommended that this action be dismissed without prejudice to refiling. Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by September 25, 2008, in accordance with 28 U.S.C. §636 and Local Civil Rule 72.1. Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. Moore v. United States, 950 F.2d 656 (10<sup>th</sup> Cir. 1991). This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

**DATED** this 5<sup>th</sup> day of September, 2008.

  
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DOYLE W. ARGO  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup>Unpublished decision cited for its persuasive value in accordance with Tenth Circuit Rule 32.1.